

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

September 26, 2008

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Ref: 02OD-247

OAHU

Amend Prior Board Action of April 8, 2004 under Agenda Item D-9, for Grant of a 55-year Non-exclusive Easement for Seawall, Concrete Steps and Boat Ramp Purposes to Miles Nakama, Kaneohe, Oahu TMK (1) 4-4-18:074 seaward.

BACKGROUND:


On April 8, 2004 under agenda item D-9, the Board approved the issuance of a term non-exclusive easement to Miles J. Nakama, the owner of the abutting private property, for seawall, concrete steps and boat ramp purposes. A copy of the submittal is attached as Exhibit A.

Currently, Sandy K. Ito, Dorothy S. Nakama, and Miles J. Nakama are listed as owners of the abutting property. Recently, staff is working with the Department of the Attorney General on the easement document, and we note the discrepancy in the owners' names. Therefore, staff recommends the Board amend its prior action to include Sandy K. Ito and Dorothy S. Nakama as the applicants.

RECOMMENDATION:

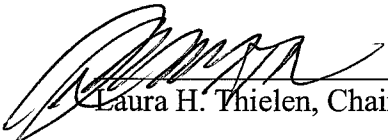
That the Board amend its prior action of April 8, 2004, under agenda item D-9 by adding "Sandy K. Ito and Dorothy S. Nakama" as the applicants.

Respectfully Submitted,



Al Jodar
Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson

D-12

D-9

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

April 8, 2004

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

02od-247

Oahu

Grant of 55-year term, Non-Exclusive Easement to Miles Nakama, for Seawall, Concrete Steps and Boat Ramp Purposes, Mikiola, Kaneohe, Oahu, Tax Map Key: 4-4-18:74, seaward.

APPLICANT:

Miles J. Nakama, whose mailing address is 44-255 Mikiola Drive, Kaneohe, Hawaii 96744.

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Kaneohe situated at Mikiola, Kaneohe, Ewa, Oahu, identified by Tax Map Key: 4-4-18:74, seaward, as shown on the attached map labeled Exhibit A.

AREA:

Concrete steps	7 square feet
CRM wall 1	19
CRM wall 2	4
Concrete boat ramp	61
	<u>91 square feet</u>

ZONING:

State Land Use District: Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State
Constitution: YES _____ NO x

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

April 8, 2004 *Kek*

ITEM D-9

CURRENT USE STATUS:

Vacant and unencumbered.

CHARACTER OF USE:

Right, privilege and authority to use, repair and maintain seawall, concrete steps and boat ramp purposes.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent or staff appraisal at fair market rent, subject to review and approval by the Chairperson.

LEASE TERM:

55 years

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

During recent inspection, the Office of Conservation and Coastal Lands (OCCL) staff stated that the applicant built the subject encroachments long before 1974 i.e. prior to the enactment of the environmental assessment law.

DCCA VERIFICATION:

Not required for individuals

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine one-time payment and
- 2) Provide survey map and description according to State DAGS standards and at Applicant's own cost (previously submitted).

REMARKS:

The applicant is participating in the Kaneohe Piers Amnesty Program. During the preparation of the maps required for the issuance of the pier lease, a rock seawall plus a boat ramp and steps were shown to be encroaching onto the State lands.

The Office of Conservation and Coastal Land (OCCL) staff has stated

that the current owner said the seawall was built in 1954 with government authorization and later the steps and concrete boat ramp were added in 1960. OCCL does not consider the encroachment a Conservation District violation and will not be asking for an after-the-fact Conservation District Use Application to cure this matter. No fine under Chapter 183-C was imposed on the wall. Further, OCCL believes that an easement for the encroaching portion of the seawall would have no adverse impacts on the natural resources, including beach resources and therefore has no objections to the issuance of an easement (see OCCL letter, Exhibit C).

The applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

No departments or agencies (other than OCCL staff of the department) were asked to comment on the encroachment, as the proposed use is not different from the existing use.

Staff does not recommend imposing a fine, pursuant to Section 171-6(12), for the encroachment constructed without prior consent by the State based on the encroachment being less than the 100 square foot threshold as approved by the Board at its June 28, 2002 meeting under agenda item D-17.


The subject seawall is to benefit the abutting property identified by tax map key (1) 4-4-18:74. Staff recommends the Board authorize the easement run with the abutting property during the term of the easement. With this condition, a new buyer of the abutting property does not need to request consent from the Board. It will save some work of the Department and also streamline the sale transaction.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a 55-year term, non-exclusive easement to Miles J. Nakama covering the subject area for seawall purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current term easement document form, as may be amended from time to time;

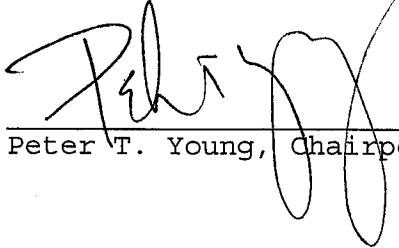
- B. Review and approval by the Department of the Attorney General; and
- C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- D. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement.
- E. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (1) 4-4-18:74, provided that when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;

Respectfully Submitted,



Al Jodar
Land Agent

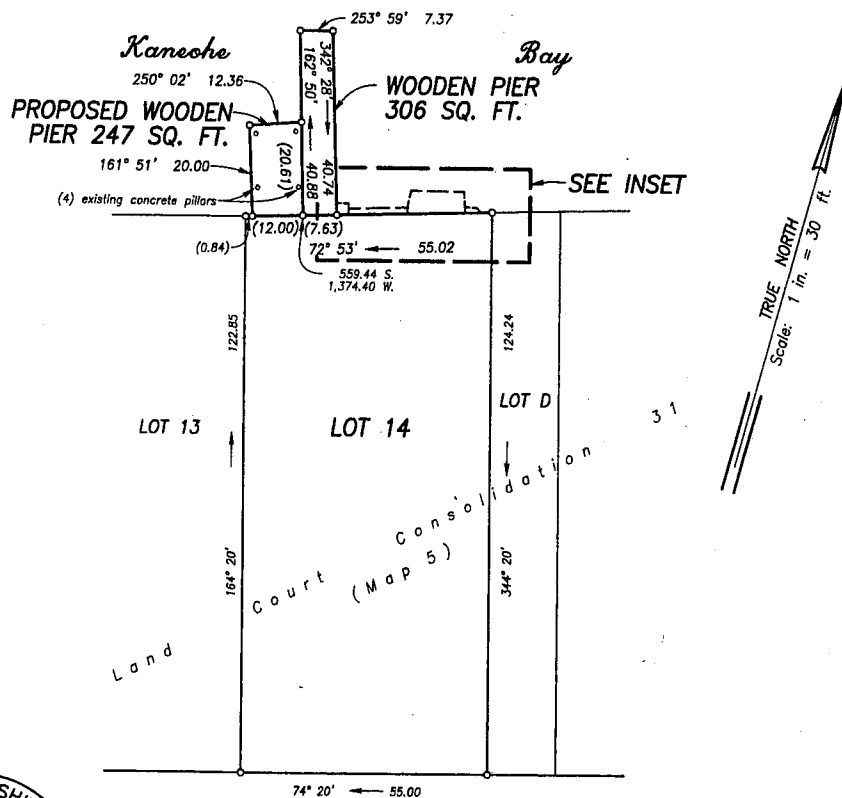
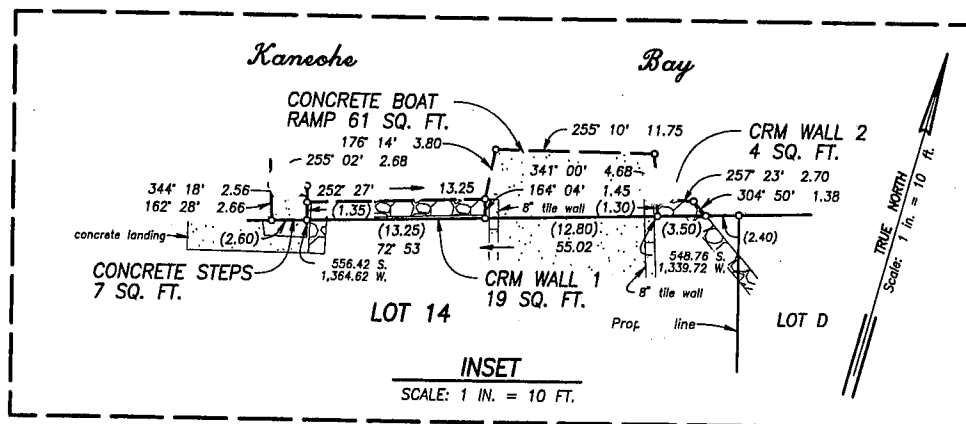
APPROVED FOR SUBMITTAL:



Peter T. Young, Chairperson



EXHIBIT A



THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION

Kenn Nishihira

LICENSED PROFESSIONAL LAND SURVEYOR No. 9043

NOTE: Coordinates referred to "MAHINU" Δ

MIKIOLA DRIVE

LOCATION OF PIERS IN KANEOHE BAY

FRONTING LOT 14 OF LAND COURT CONSOLIDATION 31

MIKIOLA, KANEOHE, KOOLAUPOKO, OAHU, HAWAII

TAX MAP KEY: 4-4-018: 074

ADDRESS: 44-255 MIKIOLA DRIVE

OWNER: DOROTHY NAKAMA

SCALE: AS SHOWN

MAY 31, 2002

KN SURVEYING

540 KULIOUOU ROAD

HONOLULU, HAWAII 96821

REDUCED NOT TO SCALE

8.5" X 14" = 0.83 SQ. FT

EXHIBIT B



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION
P.O. BOX 621
HONOLULU, HAWAII 96809

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
CONSERVATION AND
RESOURCES ENFORCEMENT
CONVEYANCES
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
LAND DIVISION
STATE PARKS
WATER RESOURCE MANAGEMENT

Dorothy Nakama
44-255 Mikiola Drive
Kaneohe, HI 96844

File Number Encroachment: OA-02-29

JUL 10 2002

Dear Ms. Nakama:

Subject: Shoreline Encroachment (Portion of Steps, Seawall and Boat Ramp) at 44-255 Mikiola Drive. [TMK: (1) 4-4-18:74]

Coastal Lands Program staff has reviewed this encroachment case, which involves portions of a set of concrete steps (7 square feet), two portions of a CRM seawall (19 and 4 square feet) and a portion of a concrete boat ramp (61 square feet) at Kaneohe Bay, Oahu. You have verbally stated that the parcel in question was purchased by your family in 1950 and you have been residing on the parcel since that date. You have further stated that your family built the CRM seawall in question in 1954 with government authorization from the State of Hawaii DOT Harbors Division. The steps and concrete boat ramp were added in 1960.

The Board of Land and Natural Resource (BLNR) recently established a policy to allow the disposition of shoreline encroachments by either removal or issuance of an easement. In carrying-out this policy, the Department established criteria to guide decision-making over specific cases. The criteria are as follows:

1. Protect/preserve/enhance public shoreline access;
2. Protect/preserve/enhance public beach areas;
3. Protect adjacent properties;
4. Protect property and important facilities/structures from erosion damages; and
5. Apply "no tolerance" policy for recent or new unauthorized shoreline structures

In addition, the Department developed a "Shoreline Encroachment Information Sheet" that is intended to provide the State with additional information to guide the Department's decisions on the disposition of shoreline encroachments. This form has been completed and submitted. Staff visited the site on July 3, 2002 to investigate the encroachment and to gather reconnaissance information to support a recommendation for either removal of the encroachment or issuance of an easement. Of primary importance are the Department's objectives to protect and preserve shoreline resources and shoreline access.

Surrounding Land Uses: It was observed during the site visit that surrounding uses are residential.

EXHIBIT C

Beach Resources: Coastal Lands Program (CLP) staff inspected the area. The shoreline in this area of Kaneohe Bay consists of mudflats. There is an existing pier off the parcel in question.

Public Access: There is a shoreline right of way abutting the parcel in question to the east.

Effect of Removing the Encroachment on:

Beach Resources: Removal of the seawall would be inconsequential as there is no beach in the vicinity. Public recreation in the form of boating may take place offshore of the parcel.

Public Access: CLP staff has determined that public access would not be enhanced by removal of the two encroachment areas.

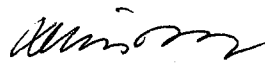
Affect on Adjacent Properties: None

The site visit by Coastal Lands Program staff visually confirmed that the encroachments in question are long established and fitting with the general pattern of coastal development in this part of Kaneohe Bay. Coastal Lands Program staff has reviewed documentation on the subject parcel at the State Survey Office. According to State records there is no prior certified shoreline conducted for this property. The age of the encroaching structures predate the existence of the State Land Use Conservation District. Therefore the Coastal Lands Program will not be pursuing any enforcement for Conservation District violations or any after the fact permitting for the subject structure.

Upon review and careful consideration of the information gathered on this case, staff has determined that the issuance of an easement for the encroaching 4 sq. ft. and 19 sq. ft. portions of the seawall, the 61 sq. ft. portion of the boat ramp, and 7 sq. ft. portion of the steps would have no adverse impacts on natural resources, including beach resources. Therefore, the Planning Branch has no objections to an easement request being processed for the structures. The Oahu District Land Office calculates the monetary amount required to dispose this use of State land through an easement.

We hope this letter helps resolve some of the outstanding issues regarding your property. Please feel free to contact Masa Alkire, of the Planning Branch, at 587-0382. Please contact the Oahu District Land Office at 587-0433 regarding the processing of an easement.

Aloha,


Dierdre S. Mamiya
Administrator

Cc: Oahu Board Member
Oahu District Land Office
City and County of Honolulu DPP
Chairperson's Office